



## FAIR POLITICAL PRACTICES COMMISSION

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February 22, 2010

Thomas Herman  
Law Offices of Thomas M. Herman

REDACTED

**Re: In the Matter of Thomas Herman  
FPPC No. 07/678**

Dear Mr. Herman:

The Fair Political Practices Commission (the "Commission") enforces the provisions of the Political Reform Act (the "Act")<sup>1</sup> found in California Government Code Section 81000 and following. On October 4, 2007, the Commission received a complaint alleging multiple violations of the conflicts of interests and economic disclosure provisions of the Act while you were a member of the Humboldt County Planning Commission.

Government Code Section 87100 of the Act states: "No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." To determine whether an individual has a disqualifying conflict of interests, the FPPC generally employs the following sequenced analysis: 1) was the individual a public official; 2) did the official make, participate in making, or use or attempt to use his official position to influence a governmental decision; 3) what are the public official's economic interests; 4) was the economic interest affected by the decision, either directly or indirectly; 5) was the economic interest materially affected by the decision; 6) was it reasonably foreseeable that the economic interest would be materially affected by the decision. (See Regulation 18700.)

Based on the evidence obtained during our investigation, it appears that on or about August 16, September 20, October 18, and November 15, 2007: 1) you were a

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<sup>1</sup>The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

member of the Humboldt County Planning Commission; 2) you voted and participated in decisions regarding the policies and land use designations for timberlands regarding the Humboldt County General Plan Update; 3) Pacific Lumber Company (PaLCo) and Barnum Timber Company (BTC), were sources of income to you under the Act; and 4) PaLCo and BTC were indirectly involved in the above decisions.

Thus, the materiality standards in Regulation 18705.1(b)(4) apply. Under that regulation, the financial effects of the general plan update decisions on PaLCo and BTC are deemed to be "material," within the meaning of Section 87103, if:

- PaLCo and BTC 's gross revenues for a fiscal year increase or decrease by \$20,000 or more,
- PaLCo and BTC incurs or avoids expenses of \$5,000 or more in a fiscal year, or
- The value of PaLCo and BTC 's assets or liabilities increase or decrease by \$20,000 or more in a fiscal year.

There is no evidence available to prove that *at the time the decisions were made*, the general plan update would have caused PaLCo and BTC's gross revenues for a fiscal year to increase or decrease by \$20,000 or more, PaLCo and BTC to incur or avoid expenses of \$5,000 or more in a fiscal year, or the value of PaLCo and BTC 's assets or liabilities to increase or to decrease by \$20,000 or more in a fiscal year. Therefore, you did not violate the conflict of interest provisions of the Act in this regard.

We also determined the following based on the evidence obtained during our investigation:

1) William Barnum and clients of William Barnum were not sources of income to you under the Act. You and William Barnum formed Barnum & Herman, an Association of Sole Practitioners, in August 2001, each owning 50% of the firm. However, each of you practiced separate areas of law, maintained your own clients and cases, and handled your own billing. Additionally, Barnum Timber Company (BTC) was a source of income to you as a client, and William Barnum is a partner in BTC. However, William Barnum's ownership interest in BTC did not reach the \$500 threshold required by the conflicts of interests provisions of the Act for sources of income, and thus, William Barnum was not a source of income to you through BTC;

2) There was no governmental decision triggering a conflict of interests regarding the Forest Review Committee meeting on March 29, 2006 because you did not act or purport to act on behalf of, or as the representative of the Planning Commission when you addressed the Forest Review Committee on that date; and

3) Income you earned from PaLCo and BTC did not meet the threshold for disclosing sources of income on your statements of economic interests.

Therefore, we have determined that you did not violate the Act, and our file in this matter has been closed.

If you have any questions regarding this matter, please feel free to contact me at 916-322-5660.

Sincerely,

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Angela Y. Brereton  
Senior Commission Counsel  
Enforcement Division